

Decision 03-01-021 January 16, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for Proposing Prices and Conditions for the Purchase by Customers of their Existing Meters in Compliance with Decision (D.) 98-07-032 and D.99-11-008.

Application 00-01-024
(Filed January 13, 2000)

And Related Matters.

Application 00-01-029
Application 00-01-030
(Filed January 14, 2000)

O P I N I O N

This decision grants The Utility Reform Network (TURN) an award of \$2,590.10 in compensation for substantial contributions to Decision (D.) 02-10-008. The decision adopted a settlement agreement involving Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) related to the purchase by customers of their existing electric meters.

1. Background

In D.02-10-008, the Commission approved a settlement that resolved all issues related to the sale by the major electric utilities of existing electric meters to their customers. Due in part to the limited nature of the utilities' applications, the parties were able to work out the differences identified in protests to the applications without requiring submission of further pleadings or hearings. As a

result, the Commission was presented with an all-party settlement for its consideration.

Consistent with the requirement of Pub. Util. Code § 1804(c), TURN filed this request for compensation within 60 days of October 4, 2002, the date of issuance of D.02-10-008. No party has opposed TURN's request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. TURN filed a timely NOI on June 29, 2000. In a ruling dated July 19, 2000, the assigned Administrative Law Judge (ALJ) found TURN eligible for compensation.

Section 1804 (c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding."

Section 1802 (h) states that "substantial contribution" means that,

in the judgment of the commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to individuals with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

The record in this proceeding is limited. It consists only of the utility applications, the protests filed by TURN, the Office of Ratepayer Advocates (ORA) and Utility Consumers Action Network (UCAN), and the all-party settlement submitted by the utilities, TURN and ORA. There are limited transcripts from a prehearing conference and a hearing on the proposed settlement.

The intervenor compensation statute explicitly includes "alternative dispute resolution procedures" in the definition of a "proceeding." (Pub. Util. Code § 1802(f).) The Commission has recognized that the use of settlements creates some difficulties in determining a particular intervenor's contribution, since Rule 51.9 of the Rules of Practice and Procedure precludes disclosure of settlement discussions. (*See* D.01-03-030, at 6.) Nevertheless, it is clear on the record that TURN was an active participant in the settlement discussions and made a number of proposals for changing and clarifying the draft settlement

agreement that were reflected in the final document. In particular, TURN's focus was on ensuring that the after-tax proceeds from any meter sales that might occur would benefit ratepayers, the subject of Paragraph 6.13 of the settlement agreement.

TURN asserts that its participation helped ensure that the proceeds of meter sales that were the subject of these applications would serve to benefit utility ratepayers. TURN acknowledges that it is difficult to assign a dollar value to the benefits achieved through its contribution to D.02-10-008. However, TURN urges, and we agree, that the relatively small amount of compensation sought in this request is more than offset by the overall benefit of TURN's contribution in the proceeding.

In sum, the Commission adopted a settlement agreement in which TURN played an important role. While there was some unavoidable duplication of effort with ORA and UCAN because of the narrow range of issues, TURN states that it minimized that duplication by filing a joint protest with ORA and otherwise coordinating its work with the other protesting parties. We find that TURN has demonstrated that it made a substantial contribution to D.02-10-008.

4. Reasonableness of Requested Compensation

TURN requests compensation for all of the time and expenses reasonably devoted to its participation in this proceeding, for a total request of \$2,590.10, including attorney time and direct expenses.

For attorney time, TURN seeks \$2,520 for the work of attorney Robert Finkelstein, including 7.25 hours billed at \$280 per hour and 3.5 hours billed at \$140 per hour. Other costs claimed include photocopying expense of \$62.40 and postage costs of \$7.70, totaling \$70.10.

4.1 Hours Claimed

TURN has presented its attorney's hourly records in an appendix to the requests for compensation. The information reflects the hours devoted to reviewing the settlement documents, drafting proposed changes, and participating in the prehearing conference and hearing. Consistent with Commission policy, TURN billed half of its attorney rate for time related to this compensation request. The hours TURN claims are reasonable.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."

TURN seeks compensation for Finkelstein at the rate of \$280 per hour. Finkelstein is an experienced supervising attorney, and the rate requested has previously been approved by this Commission for work in the year 2000. (*See* D.00-11-002, Post Transition Ratemaking Applications 99-01-016, *et al.*) Because of the small number of hours devoted to preparing this compensation requests, TURN seeks an hourly rate of \$140 (half of the 2000 rate) rather than half of a higher rate that has been authorized for Finkelstein's work in 2002.

We find that the rates requested by TURN for its attorney's time in this proceeding are reasonable and reflect market rates for attorneys of similar experience and qualifications.

4.3 Other Costs

TURN claims \$70.10 for costs relating to photocopying and postage, a reasonable sum that we adopt.

5. Award

We award TURN \$2,590.10 for contributions to D.02-10-008. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed this compensation request (February 18, 2003) and continuing until the utility makes full payment of the award.

6. Allocation of Award Among Utilities

The award granted today should be paid pursuant to Pub. Util. Code § 1807. As we did in D.00-11-002, we will assess responsibility for payment in accordance with the respective 2000 jurisdictional electric revenues of PG&E, Edison and SDG&E.

7. Waiver of Comment Period

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

8. Assignment of Proceedings

Carl W. Wood is the Assigned Commissioner and Glen Walker is the assigned ALJ in these proceedings.

Findings of Fact

1. TURN timely requests compensation for contributions to D.02-10-008 as set forth herein.
2. TURN requests an hourly rate for its attorney that has already been approved by the Commission and is reasonable based on a comparison to market rates for attorneys of similar experience and qualifications.

3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$2,590.10 for substantial contributions to D.02-10-008.

3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$2,590.10 as set forth herein for substantial contributions to Decision 02-10-008.

2. The award should be paid pursuant to Pub. Util. Code § 1807 by Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company based on the utilities' respective 2000 California jurisdictional electric revenues. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on February 18, 2003, and continuing until the full payment has been made.

3. These proceedings are closed.

This order is effective today.

Dated January 16, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D0301021
Contribution Decision(s):	D0210008
Proceeding(s):	A0001024;A0001029 and A0001030
Author:	ALJ Walker
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Disallowance
The Utility Reform Network	12/3/2002	\$2,590.10	\$2,590.10	

Witness Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	\$280	2000	\$280